

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRUBHUB INC. AND
TAKEAWAY.COM CENTRAL CORE B.V.,
PLAINTIFFS,

v.

THE KROGER CO. AND
RELISH LABS LLC,
DEFENDANTS.

CASE NO.: 1:21-cv-05312

JUDGE CHARLES R. NORGLÉ

MAGISTRATE JUDGE JEFFREY I.
CUMMINGS

DECLARATION OF SHIRA SCHWARZ
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I, Shira Schwarz, declare as follows:

1. I am the Senior Director, Brand Marketing of Relish Labs LLC d/b/a/ Home Chef (“Home Chef”). The matters stated herein are true and accurate and based on my own personal knowledge. I submit this declaration in support of the Motion for a Preliminary Injunction in the above-captioned proceeding.

2. Through my role as Senior Director, Brand Marketing, I am familiar with and responsible for Home Chef’s promotion and advertising of its products and services. This includes Home Chef’s use of the following mark (“HC Home” mark) to promote its products and services:



HOME CHEF'S ADVERTISING

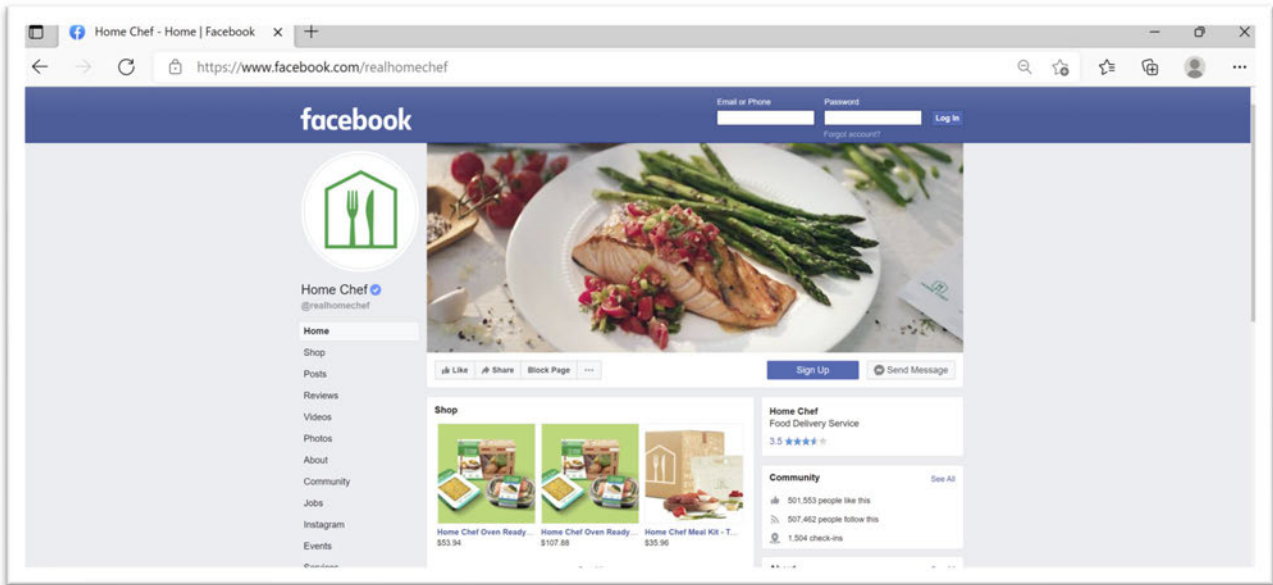
3. Home Chef promotes and advertises its products and services using the HC Home mark through a wide array of marketing channels, including through paid social media advertising (*e.g.*, Facebook, Instagram, Snapchat, Pinterest, Tik Tok, etc.), search marketing (*e.g.*, Google, Bing, etc.), television commercials, audio streaming platforms (*e.g.*, Spotify, Pandora, etc.), video streaming platforms (*e.g.*, Hulu, NBC, Roku, YouTube, etc.), podcasts, direct mail, printed circulars, merchandising in stores, on-site advertisements, email marketing, and affiliate marketing.

4. Since its public launch in 2014, Home Chef has spent over \$450 million on marketing and advertising to promote its products and services.

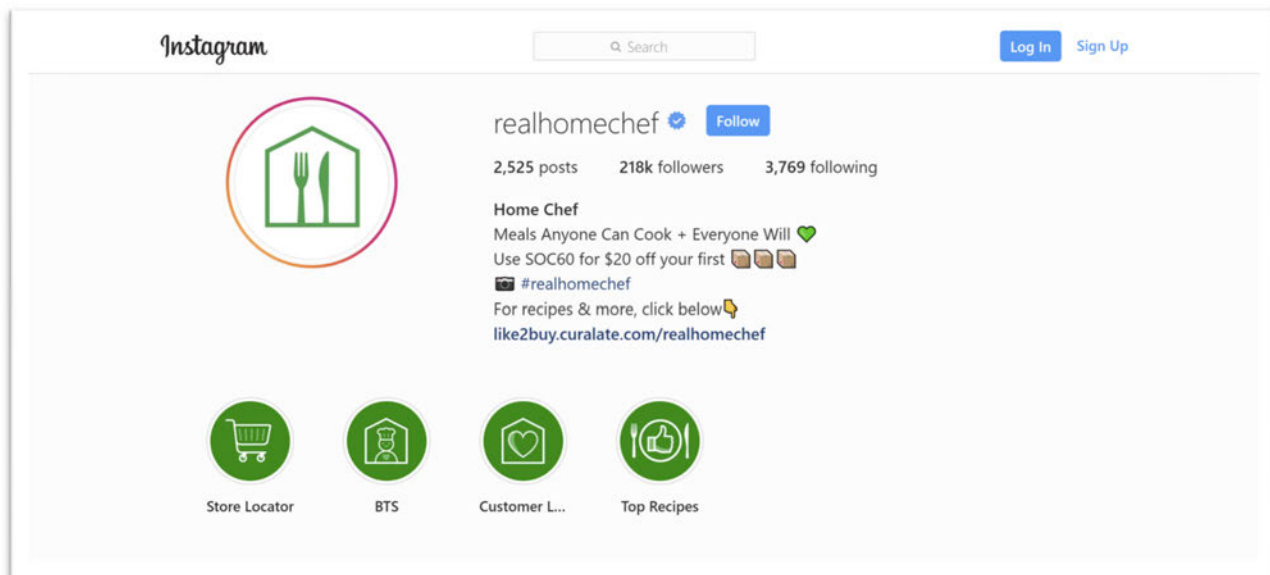
5. Through its various marketing channels, Home Chef's promotion and advertising of its products and services reaches a nationwide audience of many millions of consumers each day.

6. A key means for Home Chef's advertising and driver for Home Chef's presence in the market are its social media pages, including Facebook, Instagram, Twitter, YouTube, and Pinterest. These allow Home Chef to promote its products, announce special offers, and engage directly with hundreds of thousands of consumers.

7. Home Chef's Facebook page (@realhomechef) has **over half a million followers** and **over half a million "likes"** from users. A true and correct copy of Home Chef's Facebook page, as found at www.facebook.com/realhomechef/ on Nov. 1, 2021, is attached as **Exhibit SS1**. An image from Home Chef's Facebook page, displaying the HC Home mark as its profile icon, is shown below.



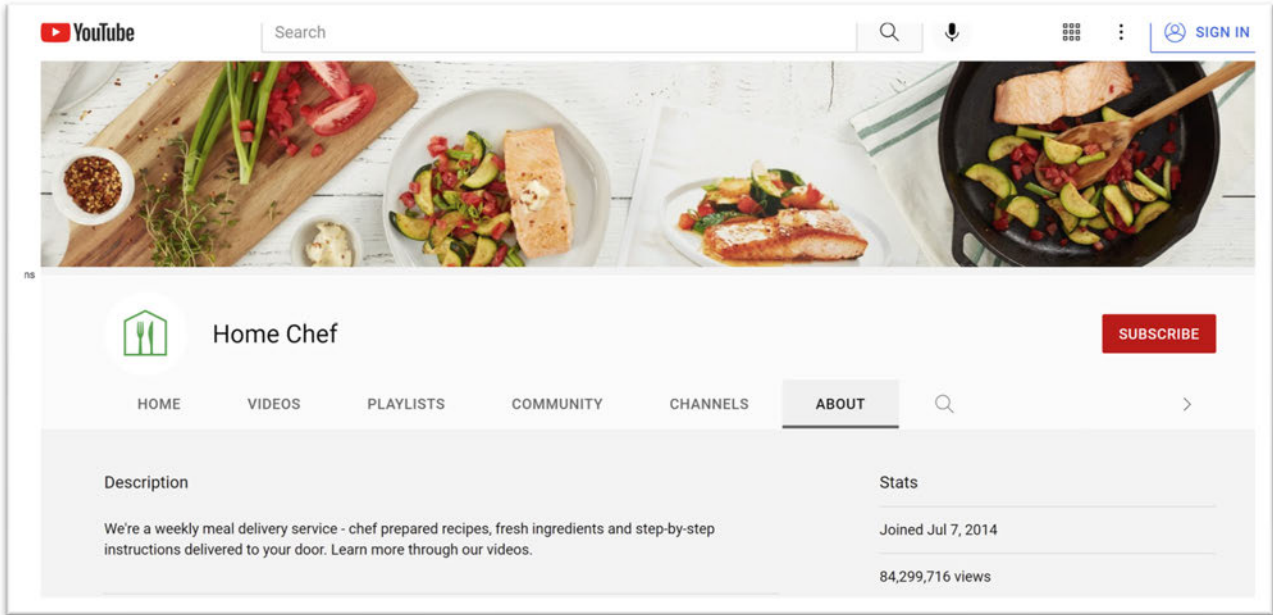
8. Home Chef's Instagram page, at the handle [@reallhomechef](https://www.instagram.com/reallhomechef/) and website www.instagram.com/reallhomechef/, has over **218,000 followers**, featuring over **2,500 posts**. A true and correct copy of Home Chef's Instagram page, as found at www.instagram.com/reallhomechef/ on Nov. 1, 2021, is attached as **Exhibit SS2**. An image from Home Chef's Instagram page, displaying the HC Home mark as its profile icon, is shown below.



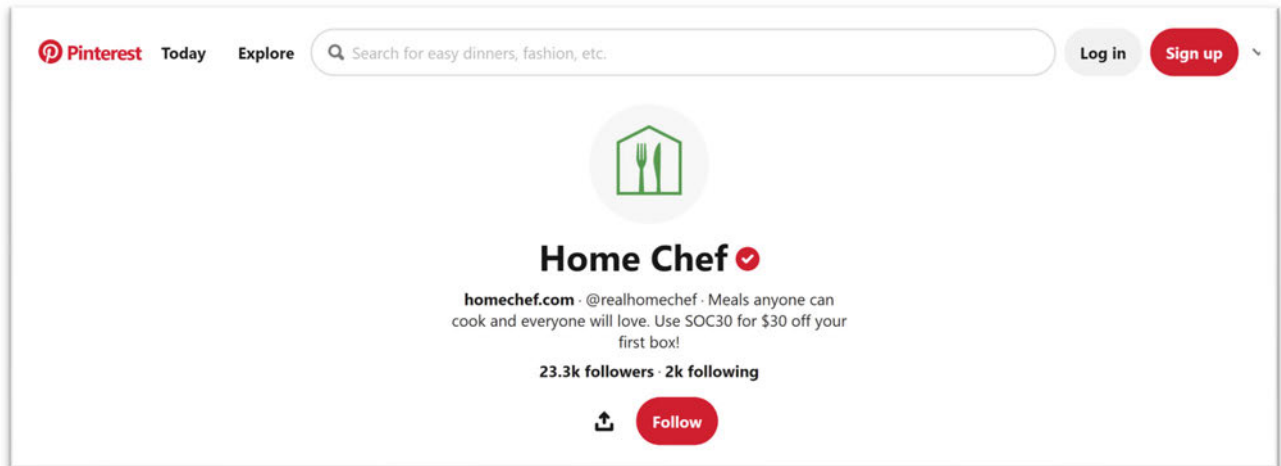
9. Home Chef's Twitter page (@realhomechef) has over **12,000 followers**, featuring over **16,500 tweets**. A true and correct screenshot of Home Chef's Twitter page, as found at [twitter.com/realhomechef/](https://twitter.com/realhomechef) on Nov. 1, 2021, is attached as **Exhibit SS3**. An image from Home Chef's Twitter page, displaying the HC Home mark as its profile icon, is shown below.



10. Home Chef's YouTube channel has had over **84 million views** since July 7, 2014. A true and correct screenshot of Home Chef's YouTube page, as found at www.youtube.com/c/HomeChefOfficial on Nov. 1, 2021, is attached as **Exhibit SS4**. An image from Home Chef's YouTube page, displaying the HC Home mark as its profile icon, is shown below.

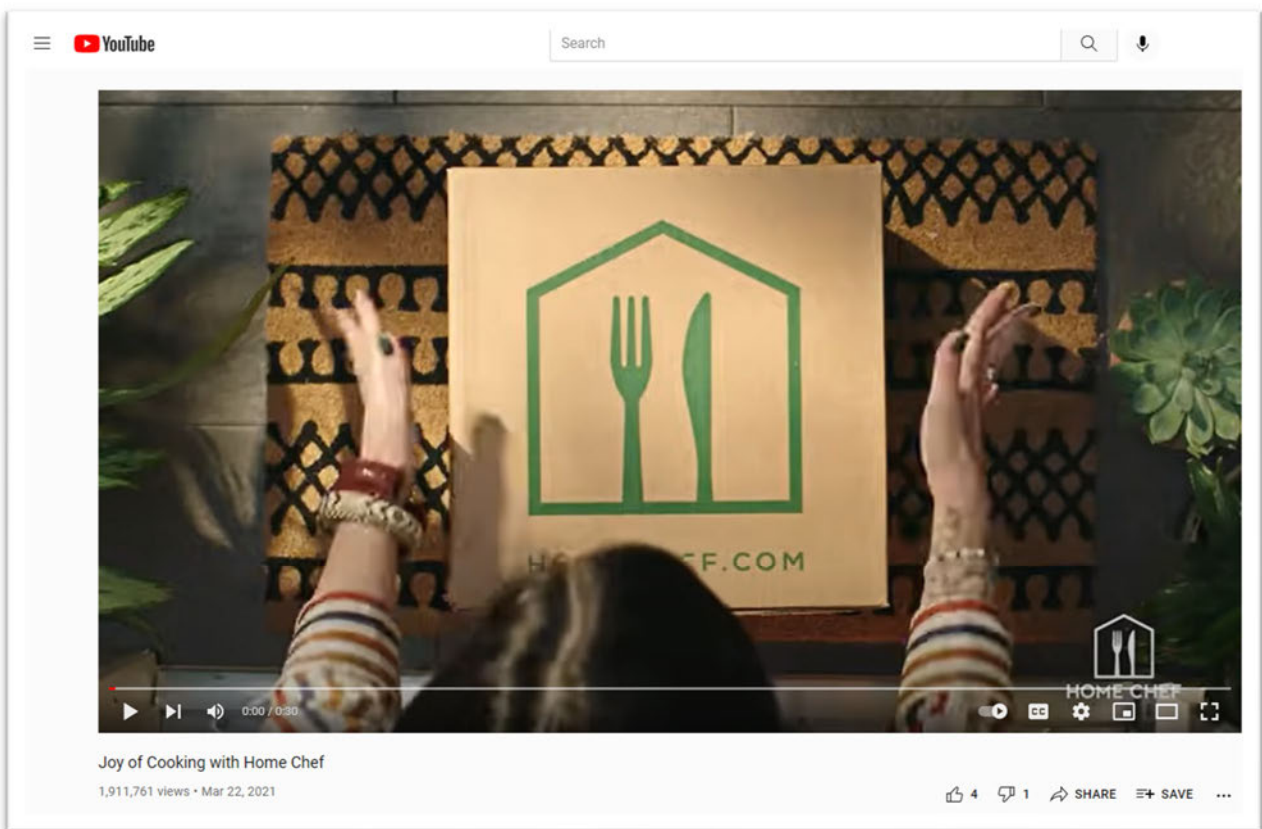


11. Home Chef's Pinterest page (@realhomechef) has **over 23,000 followers**. A true and correct screenshot of Home Chef's Pinterest page, as found at www.pinterest.com/realhomechef/ on Nov. 1, 2021, is attached as **Exhibit SS5**. An image from Home Chef's Pinterest page, displaying the HC Home mark as its profile icon, is shown below.



12. Home Chef regularly airs commercials advertising its products and services to a nationwide audience through television and cable broadcasting, including without limitation through networks such as ABC, NBC, FOX, CW, A&E, AMC, BBC America, Bravo, CMT,

Cooking, Discovery, Dish Sports, E!, Food Network, and many others. Home Chef's commercials all prominently feature the HC Home mark, collectively reaching an estimated annual average of **21 million household impressions per week**. True and correct screenshots of a representative selection of Home Chef commercials that have been broadcast, including on various television networks and Home Chef's YouTube channel at <https://www.youtube.com/channel/UC9ZQ7tPGYn429wmqENb7j2A>, are attached as **Exhibit SS6**. Below is a screenshot from one commercial, as found at <https://www.youtube.com/watch?v=cWKMFF8hbFI> on Nov. 1, 2021, with over **1.9 million views** since March 22, 2021.



13. In addition to network and cable television, Home Chef airs commercials advertising its products and services through an array of online video streaming platforms,

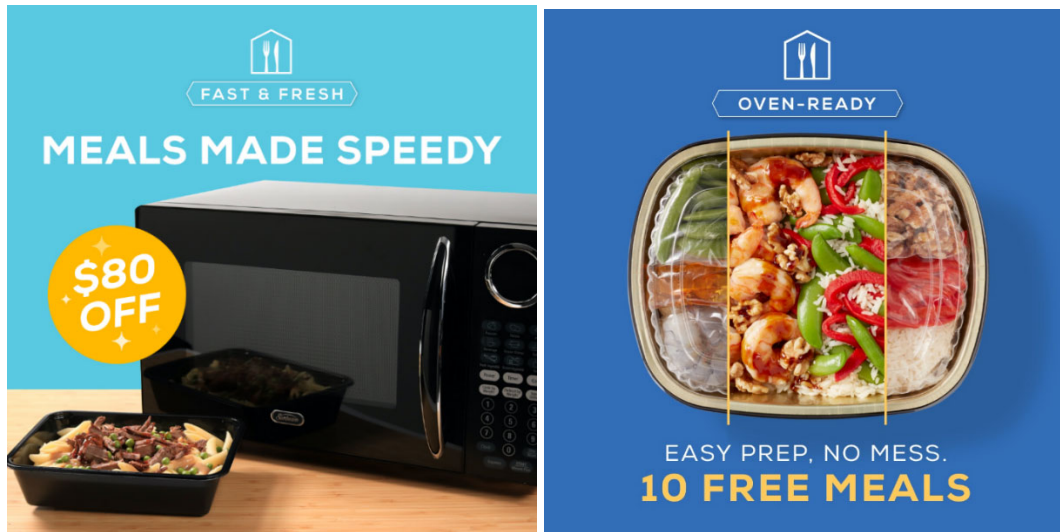
including without limitation through ABC, CNET, Comcast, Disney Cross Platform, DirecTV Now, ViacomCBS EyeQ, Food Network, Fox News, Fubo, Hallmark, HGTV, ID, NBC, NFL, OWN, Sling TV, TLC, and Travel. Home Chef's commercials aired through online streaming platforms reach an estimated annual average of **8.8 million household impressions per week**.

14. Home Chef also advertises its products and services to consumers through regular email promotions, featuring new product announcements, limited time offers, exclusive deals, cooking information, and other content, and prominently displaying the HC Home mark. On average, Home Chef sends approximately **30 million emails** on a weekly basis, reaching approximately **4.5 million** consumers nationwide.

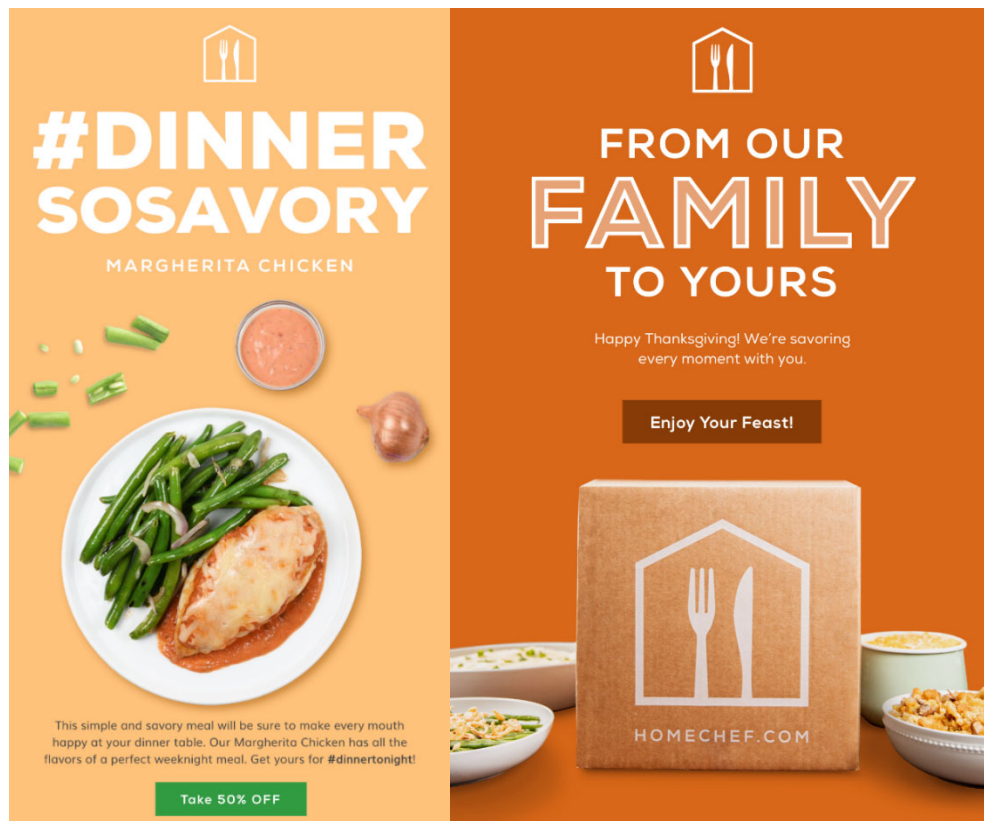
HOME CHEF'S USE OF HC HOME MARK IN ADVERTISING

15. Home Chef's products and advertisements prominently feature the HC Home mark, often displaying the HC Home mark by itself, apart from the HOME CHEF brand name and mark, and in an array of different color combinations, including with the mark colored in white, black, green, orange, and blue, among others. True and correct copies of representative advertisements displaying the HC Home mark by itself are attached as **Exhibit SS7**. A few examples are shown below:





16. Home Chef also regularly uses the HC Home mark in advertisements against an orange background. True and correct copies of representative advertisements displaying the HC Home mark in white against an orange background are attached as **Exhibit SS8**. A few examples are shown below:





HOME CHEF'S PARTNERSHIPS AND CO-BRANDING

17. To help expand the company's advertising and consumer reach, Home Chef regularly partners with celebrity chefs, popular influencers, well-known brands, and other sponsors to promote Home Chef's products and services to their followers. Home Chef's advertisements with such third-party sponsors often depict the HC Home mark directly alongside the sponsor's name or mark.

18. In 2021, Home Chef partnered with celebrity chef Gina Homolka and her brand Skinnytaste, a popular recipe and cookbook franchise. Together they created a variety of meal kit recipes, including options that cater to different dietary needs such as carb conscious and calorie conscious. True and correct copies of representative advertisements for Home Chef's partnership with Skinnytaste are attached as **Exhibit SS9**. The co-branded packaging and advertising for Home Chef's meal kits co-created with Skinnytaste prominently feature Home Chef's HC Home mark together with the SKINNYTASTE trademark, as shown in the examples below.

\$90 OFF

INTRODUCING THE FRESH — START MENU

FEATURING **skinnytaste**

Enjoy fresh dietitian-approved recipes, including EXCLUSIVE Skinnytaste all-in-one meal kits that make balanced eating feel easy and fun.

Look for the Skinnytaste badge today!

Pick Your Meals

• LIMITED TIME ONLY! • MAY & JUNE

NEW!
skinnytaste
with **HOME CHEF**

Enjoy \$90 Off

DELICIOUS RECIPES, FEWER CALORIES

EXCLUSIVE Skinnytaste meal kits are here at Home Chef! Enjoy balanced eats that taste as great as they make you feel. Delicious, better-for-you recipes ready to be delivered right to your door!

skinnytaste

Look for the Skinnytaste menu badge.

Gina Homolka
SKINNYTASTE
FOUNDER

19. Since 2018, Home Chef has partnered with Feeding America, the nation’s largest domestic hunger-relief organization, to help support its mission of equitable access to nutritious foods through both a corporate level donation and through donations from our social media influencers and our customers. In 2021, Home Chef launched a “Home Chef Helps” initiative in partnership with Feeding America, which has so far this year led to over one million meals being donated to those in need. True and correct copies of representative advertisements for Home Chef’s “Home Chef Helps” initiative with Feeding America are attached as **Exhibit SS10**. Home

Chef and Feeding America have widely promoted the “Home Chef Helps” initiative, with co-branded advertising featuring the HC Home mark directly alongside the FEEDING AMERICA mark on their websites and other marketing channels, as shown in the examples below.



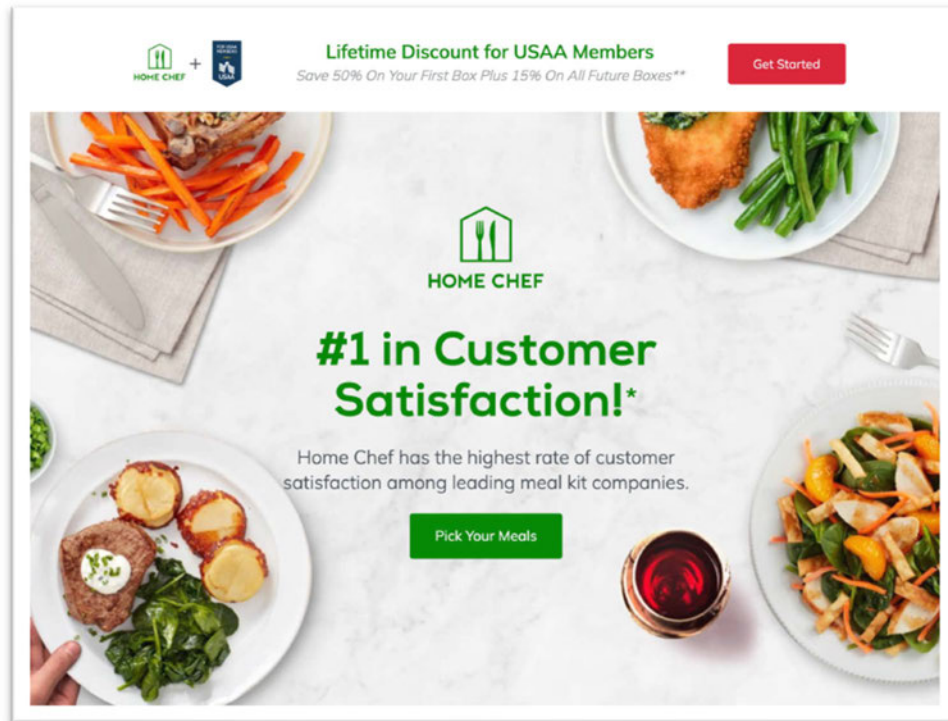
20. Home Chef has partnered with online video streaming platform Peacock to provide a special offer for the companies' respective services. True and correct copies of representative advertisements for Home Chef's joint advertising campaign with Peacock are attached as **Exhibit SS11**. Such advertisements feature the HC Home mark directly alongside the PEACOCK mark, as shown in the example below.



21. Home Chef has also partnered with Student Beans to provide special discounts on Home Chef meals to Student Beans' network of student followers. True and correct copies of representative advertisements for Home Chef's joint advertising campaign with Student Beans are attached as **Exhibit SS12**. Those advertisements feature the HC Home mark directly alongside the STUDENTBEANS mark, as shown in the example below.



22. In addition, Home Chef has partnered with USAA to provide special discounts on Home Chef meals to USAA members. A true and correct copy of an advertisement for Home Chef's partnership with USAA is attached as **Exhibit SS13** and shown below, featuring the HC Home mark directly alongside the USAA logo.

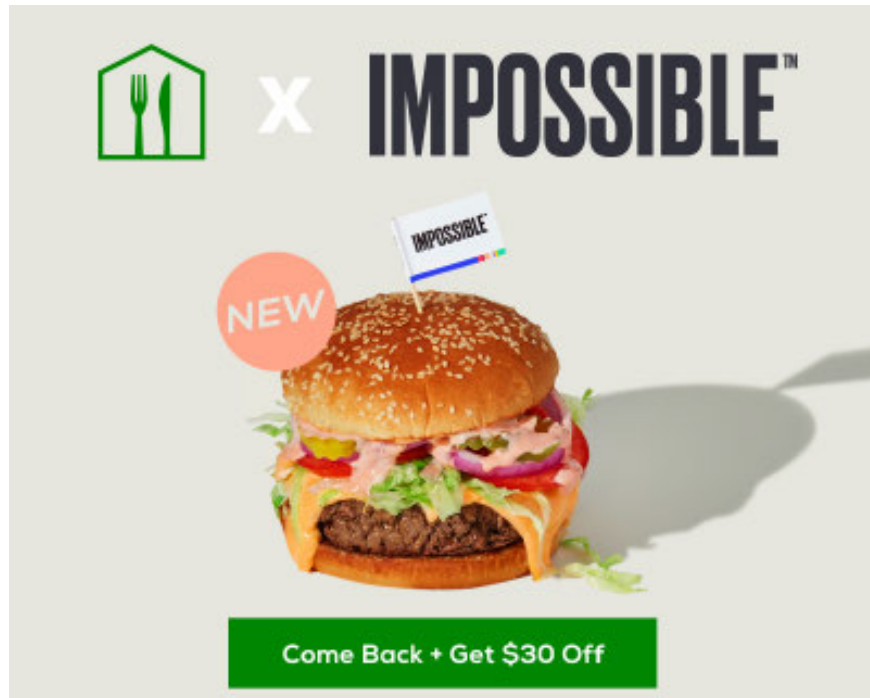


23. Home Chef also regularly partners with third-party food product brands to develop and release special-edition meal kits and prepared meals featuring ingredients from the partner brand.

24. For example, Home Chef partnered with Heinz, the famous condiment company, to create a limited-time burger meal kit featuring Heinz condiments. True and correct copies of representative advertisements for Home Chef's co-branded meal kits with Heinz are attached as **Exhibit SS14**. Home Chef's advertisements and product packaging for its co-branded meal kits with Heinz feature the HC Home mark directly alongside the HEINZ mark, as shown in the example below.



25. Home Chef has also partnered with Impossible Burger, the popular meatless burger company, to create a limited-time burger meal kit featuring Impossible Burger's product. True and correct copies of representative advertisements for Home Chef's co-branded meal kits with Impossible Burger are attached as **Exhibit SS15**. Home Chef's advertisements and product packaging for its co-branded meal kits with Impossible Burger feature the HC Home mark directly alongside the IMPOSSIBLE mark, as shown in the example below.



26. In addition to the foregoing examples, Home Chef has partnered with a number of other well-known brands on joint advertising campaigns to promote their respective services to a broader audience, including American Express, Southwest Airlines, and United Airlines.

27. Home Chef also frequently partners with celebrities and influencers to sponsor and promote Home Chef's products and services, helping to reach a vast, nationwide audience through social media advertising, television commercials, and email promotions.

28. For example, Home Chef recently collaborated with Olympic gymnast Shawn Johnson to create a new line of healthy, easy-prep meals. True and correct copies of representative advertisements for Home Chef's co-created meals sponsored by Shawn Johnson are attached as **Exhibit SS16**. The co-created meal options feature the HC Home mark directly alongside the tagline "Selected By Shawn Johnson," as shown in the example below.



29. Home Chef has also partnered with celebrity television personality Jonathan Van Ness to sponsor and promote Home Chef's products and services. True and correct copies of representative advertisements for Home Chef's partnership with Mr. Van Ness are attached as **Exhibit SS17**.

HOME CHEF'S COMPETITION

30. With the COVID-19 pandemic, consumers are increasingly seeking out heat-and-serve and takeout meal options over dining out in restaurants. A true and correct copy of a study published by Kantar in March 2021, titled "Meal solutions: Blurred lines for retailers, restaurants and delivery," is attached as **Exhibit SS18**. According to the study, "49% of dinners are up for grabs every day, with consumers making decisions about where to get their meals that same day." *Id.* at p. 4. According to this study, 17% of consumers are buying heat-and-serve food more often and 26% of consumers are getting takeout from restaurants and fast food more often, while 37% of consumers are eating at restaurants less. *Id.* at p. 10.

31. Media articles and consumer blogs often compare and review meal kit companies and other meal delivery companies under the same umbrella of food delivery services. Attached as **Exhibit SS19** are true and correct copies of the following articles:

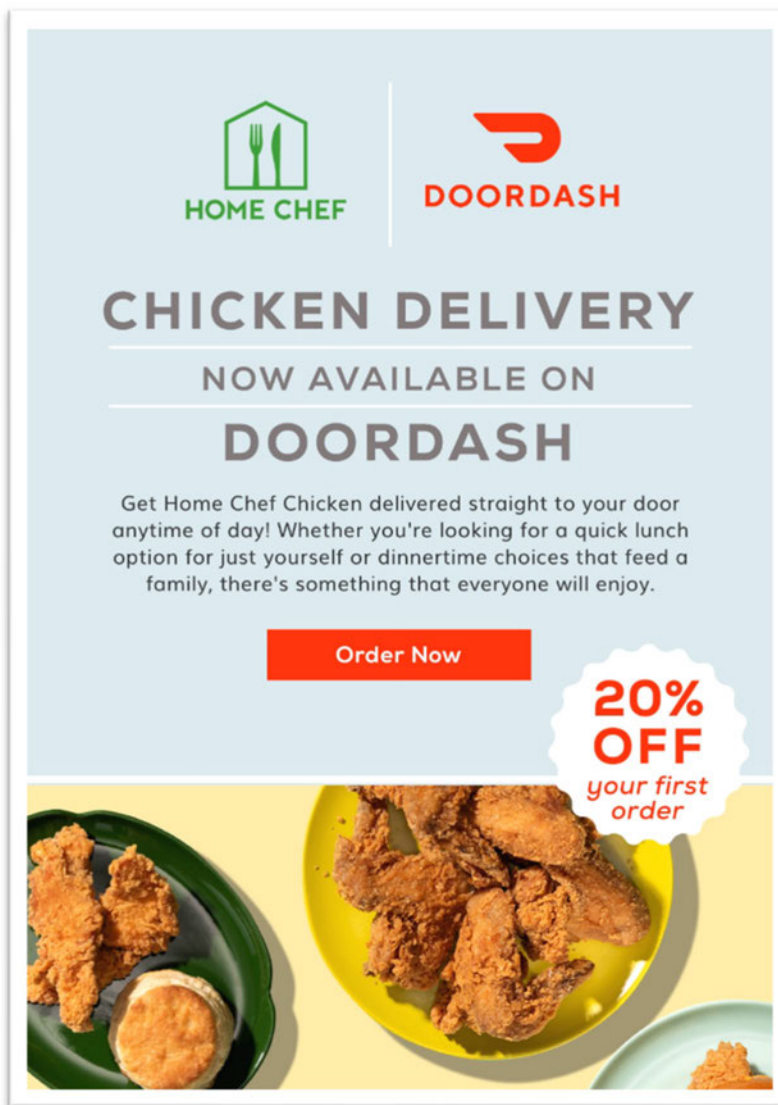
- i) “14 Food Delivery Services Here to Help,” Sept. 27, 2021, RetailMeNot, article found at <https://www.retailmenot.com/blog/food-and-grocery-delivery-sites.html> (last visited and also printed on Nov. 1, 2021);
- ii) “The 28 Best Food Delivery Services, from Local Takeout Apps to Fully Prepped Meal Kits,” Oct. 4, 2021, Pure Wow article found at <https://www.purewow.com/food/best-food-delivery-services> (last visited and also printed on Nov. 1, 2021); and
- iii) “A Guide to Food Delivery Services for Seniors,” Mar. 18, 2021, Senior Living article found at <https://www.seniorliving.org/internet/food-delivery/> (last visited and also printed on Nov. 1, 2021).

32. As a result of this increasing trend in consumers deciding what to eat for dinner the same day, and to better compete with restaurant ordering and delivery companies, Home Chef has been expanding its offerings of pre-made, ready-to-cook and ready-to-eat meal options, which are sold through Kroger retail stores nationwide.

33. Home Chef often promotes its products and services as a convenient, low-cost alternative to restaurant takeout, including by comparing its services with restaurant delivery services. True and correct copies of representative advertisements comparing Home Chef’s services with other restaurant takeout and delivery services are attached as **Exhibit SS20**. A few examples are shown below:



34. Beginning in 2021, Home Chef started partnering with meal delivery service - and Grubhub competitor - DoorDash to promote and sell Home Chef's meal kits and prepared meals for pickup and home delivery through select Kroger family stores across the country. A true and correct copy of an advertisement for Home Chef's partnership with DoorDash is attached as **Exhibit SS21** and shown below, featuring the HC Home mark directly alongside the DOORDASH mark.



35. In addition to DoorDash, consumers are also able to use Instacart, another meal and food delivery company, to purchase Home Chef meal kits and prepared meals for pickup and delivery from Kroger family stores nationwide.

HOME CHEF'S CONSUMERS

36. Home Chef targets a broad range of consumers, including families and individuals who are interested in introducing variety into their dinner routine, who are seeking a more

convenient way to get dinner on the table, and who are looking for healthier versions of familiar favorite meals.

GRUBHUB'S USE OF TAKEAWAY HOME MARK AND ACTUAL CONFUSION

37. Plaintiff Grubhub Inc. ("Grubhub") appears to have launched the rollout of its



new branding using the mark (the "Takeaway Home" mark) on August 24, 2021, when Grubhub started using the Takeaway Home mark on its website and mobile app. A true and correct copy of a press release published by Grubhub, titled "Grubhub Goes Orange" and dated August 24, 2021, is attached as **Exhibit SS22**. The press release states:

Don't get caught doing a double take when you reach for the Grubhub app today. It's not your eyes - we've officially jumped in feet first to our new orange branding and logo! As we announced last month, we're joining the Just Eat Takeaway.com (JET) family with our new look, and today's the day you'll see a lot more of our new citrus-colored branding throughout our app, website, and most anywhere else you find the Grubhub logo.

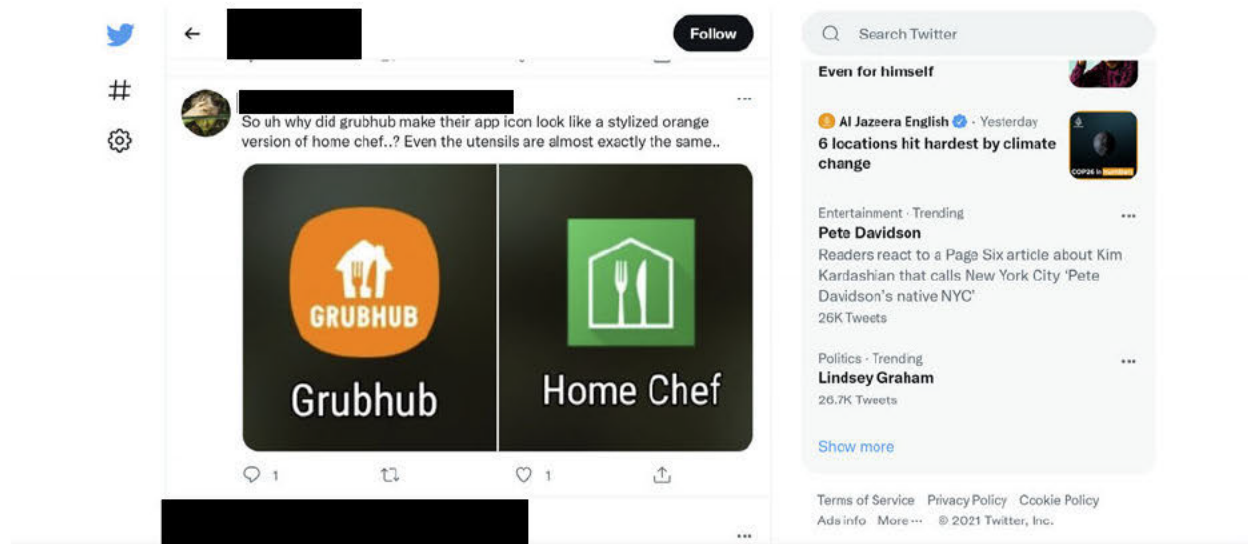
Id.

38. I first learned of Grubhub's use of the Takeaway Home mark on August 25, 2021, in reading the press release attached as Ex. SS22.

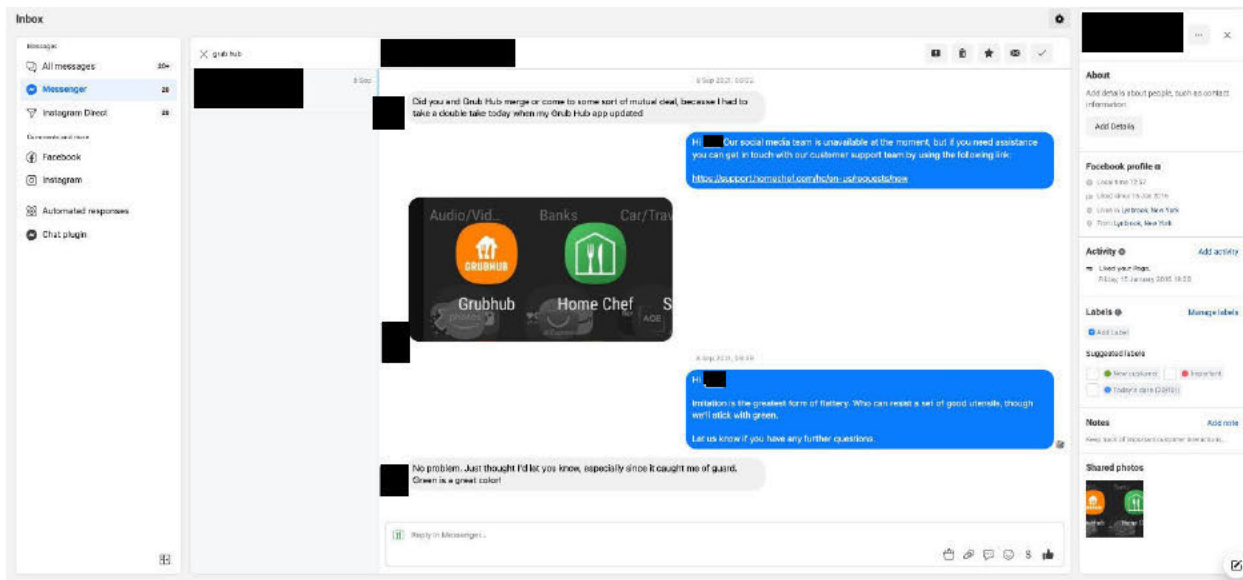
39. Since Grubhub started using the Takeaway Home mark, I am aware of at least two instances in which consumers mistakenly believed Grubhub's use of the Takeaway Home mark was associated with Home Chef.

40. In my position as Senior Director, I have responsibility for Home Chef's Twitter account. On November 1, 2021, I visited Twitter and took the following full-page screenshot of a post by Twitter user [REDACTED], who uses the Twitter name [REDACTED], dated August 25, 2021. It is a true and correct copy of a publicly accessible "tweet" and is attached as **Exhibit**

SS23. One may access it by visiting <https://twitter.com> [REDACTED] and scrolling to August 25, 2021. To the best of my current knowledge, I do not know and have never met this person. The tweet states “So uh why did grubhub make their app icon look like a stylized orange version of home chef..? Even the utensils are almost exactly the same..,” as shown below.



41. In my position as Senior Director, I have responsibility for Home Chef's Facebook account and often visit Facebook. As noted above, Home Chef has a Facebook account and one can send a message to Home Chef through that account. Home Chef receives and uses a social media team to answer many messages through this Facebook account. One of my duties is to oversee that social media team. On September 8, 2021, a Home Chef customer sent a Facebook message to Home Chef's Facebook account. The exchange with the Home Chef customer is attached as **Exhibit SS24**. The message states: “Did you and Grub Hub merge or come to some sort of mutual deal, because I had to take a double take today when my Grub Hub app updated,” as shown below.



I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2021

Shira Schwarz
Shira Schwarz